

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2289 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

BISRAM @ VISHRAM BHAGIRATH CHAKRAVARTI (PRAJAPATI)

Versus

COMMISSIONER OF POLICE

Appearance:

MRS JYOTSNA K PATEL for Petitioner
GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/11/1999

ORAL JUDGEMENT

#. Heard learned advocate Ms.J.K.Patel for the
petitioner and learned A.G.P. Mr.D.P Joshi for the
respondent nos.1,2 and 3.

#. The detention order dtd.5.2.99 passed by respondent
no.1 Commissioner of Police, Ahmedabad in exercise of
power conferred under Sec.3 (1) of Gujarat Prevention of
Anti Social Activity 1985 ("PASA" for short) is

challenged in the present proceeding under Article 226 of Constitution of India.

#. The grounds of detention supplied to the petitioner with translation, copy of which is produced at Annexure-C interalia indicate that three criminal cases registered against the petitioner on 4.10.98 at Amraivadi Police Station on 26.1.99 at D.C.B. Police Station and on 31.1.99 also at D.C.B. Police Station. The first case is in respect to offence made punishable under Sec.379 read with Sec.114 of I.P.C. While two other cases are for the offences made punishable under Sec.25 (1) (a) (1b) of Arms Act. Over and above that, two witnesses on assurance of anonymity have supplied information against the petitioner for incident alleged to have occurred on 14.1.99 and 17.1.99. That on the basis of the said material, respondent no.1 has come to conclusion that the petitioner is a "dangerous person" within the meaning of Sec.2 (c) of PASA. That enforcement of general provision of law being insufficient to prevent the petitioner from continuing his anti-social activity which adversely affects the maintenance of public order, detention order is necessary and hence impugned order is passed.

#. The petitioner has challenged the impugned order on numerous ground. It is contended that on the date of passing of detention order the petitioner was in judicial custody in respect to cases registered against him and was on police remand in respect to the case registered vide C.R.No.3002/99. That despite the said facts, the detaining authority has failed to consider the less drastic remedy of opposing the bail or claiming the cancellation of bail granted to the petitioner available under Sec.437 (5) of Cr.P.C. On account of said non application of mind the subjective satisfaction having been vitiated, the impugned order is rendered invalid.

#. In the matter of Zubedabibi Rasidkhan Pathan Vs. State of Gujarat & Ors reported vide 1995 (2) G.L.R. P.1134 Division Bench of this court has expressed view that non consideration of less drastic remedy like cancellation of bail under Sec.437 (5) of Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No.1056/99 decided on 15.9.99 by this court (Coram : C.K.Thakkar & A.L.Dave JJ).

#. On scrutiny of grounds of detention it is stated in penaltymate para that petitioner is in police custody. However, on completion of remand period, in all

possibility the petitioner might apply for bail and having got himself released, he is likely to continue his anti-social activity and therefore detention order is necessary. The said observation suggests that the detaining authority while formulating the grounds of detention has failed to apply his mind to the availability of less drastic remedy claiming cancellation of bail or opposing the bail under Sec.437 (5) of Cr.P.C. That due to the non application of mind, subjective satisfaction having been vitiated, the impugned order rendered invalid.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider the other contention raised.

#. On the basis of aforesaid discussion petition is allowed. The detention order dtd.5.2.99 passed by the respondent no.1 against the petitioner is hereby quashed and set-aside. The petitioner Bisram @ vishram Bhagirath Chakraverti (Prajapati)is ordered to be set at liberty forthwith, if he is not required in any other case.

#. Rule to that extent made absolute.

kks.